

# **Utility Leverage Program**

## **Unserved Certification Guidelines**



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**Utility Leverage Program- Unserved Certification Guidelines**

**Guidelines as of March 1, 2023**

**Submission Process**

Pursuant to "§ 56-585.1:9" of the Code of Virginia, petitioners may submit proposed project areas to the Department of Housing and Community Development (DHCD) to be designated as unserved by broadband. Petitions must include the following:

1. Point and polygon shapefile(s) of the proposed project area as defined in this document. Petitioners must describe the proposed geographic area including specific boundaries of the project area (e.g. street names, local and regional boundaries, etc.) and attach a copy of the map of your project area(s). Wireless petitioners are required to include shapefiles of heat maps indicating received signal strength indicator (RSSI) measures in the proposed project area. In addition, all shapefiles must exclude state and authorized federal awards in the proposed project areas.
2. Petitioners must provide a list of existing providers in and near the proposed project area and describe their efforts to identify existing providers, ensure overlap was avoided, and how this information was compiled with source(s). Areas with service by satellite providers are not considered served.
3. If the petition is submitted by an entity other than a Phase I or Phase II Utility, the petitioner must provide a copy of the executed Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) with an investor owned utility indicating intent that the Phase I or Phase II Utility intends to partner with the petitioner to provide or make available broadband capacity to internet service providers in the petition area.
4. Petitioners are encouraged to submit any additional supporting documentation demonstrating the unserved nature of the project area(s).

After submission, the petition materials will be reviewed for completeness and posted online to the DHCD website. Entities that have signed up to be notified when certifications are posted will be notified via email that a new petition is available for review. Petitioners are strongly encouraged to contact incumbent providers, if any, adjacent to the project area to ensure the proposed project area does not overlap with existing service. Petitioners are also encouraged to contact DHCD prior to submitting a petition area to ensure state funded areas are removed from the petition area prior to submittal. Depending on project volume and any other unforeseen circumstances, DHCD shall make a determination if the project area is unserved within (75) seventy-five days, from the date of posting the proposed project. A written determination of a petition and point shapefiles depicting the final unserved area shall be provided by the Director of the Office of Broadband.

## Challenge Process

Pursuant to "§ 56-585.1:9" of the Code of Virginia, "unserved by broadband" means a designated area in which less than 10 percent of residential and commercial units are capable of receiving broadband service, provided that DHCD for its Virginia Telecommunication Initiative may, by guideline, increase such percentage from time to time. Prospective challengers are *strongly encouraged* to contact applicants directly and discuss the contested project area before submitting a challenge, as project areas can often be re-scoped to remove overlap. Evidence of serviceability must be demonstrated by showing a reasonable number of customers within the area of claimed serviceable units.

Planned service to a proposed project area is eligible for the purpose of a challenge if state or federal funds have been awarded and the provider has committed to providing service to the areas using these state or federal funds. Areas adjacent to state or federally funded areas may be eligible for a challenge if the challenger demonstrates existing awards will cover the adjacent area. The challenger must commit to serving the adjacent areas at speeds equal to or greater than the petitioners deployment speed.

Challenges can be made to portions of a proposed project area without invalidating the entire project. DHCD reserves the right to invalidate a portion(s) of a proposed project area as served, aggregate challenges by different providers to determine overlap, and invalidate insufficient challenges. Challengers must demonstrate that serviceable units in the project area have access to broadband<sup>1</sup> speeds as of the date of the challenge submission deadline or that the petition is ineligible as a result of committed state or federal funding subject to the conditions described above.

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<sup>1</sup> Internet access at speeds equal to or greater than the speed threshold at which internet service is considered broadband, as determined by the Department of Housing and Community Development in it's the Virginia Telecommunication Initiative program guidelines and criteria

DHCD must receive all of the information detailed below or the challenge may be deemed incomplete and invalid. Challengers must provide:

1. A signed and notarized affidavit affirming the challenge and attached information is true.
2. Most recent Federal Communications Commission (FCC) Form 477 or equivalent.
3. Minimum/maximum speeds available in the proposed project area. (*Note: Minimum/maximum speeds available in the challenged area are subject to the Freedom of Information Act and will not be provided FOIA exemption.*)
4. Street level data of serviceable units within the proposed project area and provide the speeds those serviceable units are able to receive.
5. Point shapefiles that show each proposed passing in the challenged area, designated by a singular mapped point, in the challenged area containing attribute data showing the addresses of each point. Polygon shapefiles delineating the general challenged area(s).
6. For wireless providers: Heat maps indicating received signal strength indicator (**RSSI**) in the challenged area.
7. If challenging due to planned state or federal funding, documentation detailing commitment to provide service in or adjacent to the proposed project area.
8. The technology type deployed in the challenged area, i.e. fiber, DSL, hybrid-coaxial, fixed wireless (*Note: The technology type deployed in the challenged area is subject to the Freedom of Information Act and will not be provided FOIA exemption.*)

DHCD will review all applicable challenge and rebuttal information to determine if a challenge is credible. DHCD reserves the right to request verified speed tests on all or portion(s) of the challenged area at the time of peak network usage. Further, DHCD reserves the right to request locations of actual subscribers within the area of claimed serviceable units.

### **Petition Review Timeline**

DHCD, on the agency website<sup>2</sup>, shall publish two dates in calendar year 2023 at which petitions for unserved certification will be due and considered by DHCD for unserved certification. Petitions submitted prior to this deadline will be considered at the next closest petition filing deadline. Petitions submitted between the date<sup>3</sup> that Virginia Telecommunication Initiative (VATI) Notice of Applications are due and the deadline for challenge rebuttals will be considered beginning at the nearest stated review date after the deadline for challenge rebuttals. DHCD reserves the right to adjust this guideline based on the unique requirements of the Broadband Equity, Access, and Deployment Program.

DHCD will post electronic copies of the proposed findings to the agency website within seven (7) days after petition materials are received. DHCD will notify individuals signed up for certification notifications via email that the petition is available for review. Providers wishing

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<sup>1</sup> <https://dhcd.virginia.gov/utilityleverage>

<sup>3</sup> The VATI Timeline can be found on the agency website at <https://www.dhcd.virginia.gov/vati>

to submit a challenge must provide the information required in these guidelines no later than (30) thirty days from the date the petition is posted on the agency website. Petitioners will be notified if their proposed project area is being challenged and will have fourteen (14) days from notification of a challenge to provide rebuttal information to DHCD including speed tests and a signed and notarized affidavit affirming the rebuttal and attached information is true. Should DHCD require additional information from the challenger following the submission of rebuttal materials, challengers will have ten (10) days to submit requested materials from the time of request. If speed tests are requested, please see Appendix A for additional guidance on the number of speed tests required and acceptable practices for conducting speed tests. Broadband providers that utilize variable speed technologies are strongly encouraged to include speed tests according to this guidance at the time of challenge. DHCD may extend any portion of the review period if petition volume or other circumstances necessitate extension.

DHCD shall notify the petitioner and challenger in writing if a challenge is valid no later than (45) forty-five days after the challenge window has closed. If petition volume or circumstances necessitate an extension, final notification will be issued no later than (60) sixty days after challenge window has closed. If no challenge is received and DHCD has determined no state or authorized federal funding is present in the project area, the proposed project area will be deemed as unserved.

For all questions regarding the submission and challenge process, please email: [broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov).

## **Freedom of Information Act (FOIA) Policy**

Pursuant to "§ 2.2-3705.6-3" of the Code of Virginia, information pertaining to utility leverage program challenges may be eligible for FOIA exemption. Challengers wishing to receive FOIA exemption must request exemption directly to [broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov), detailing the nature of the requested material. **Do not include the confidential materials in the FOIA exemption request.** Challengers wishing to request exemption for multiple challenges must do so individually, in separate requests. DHCD will notify challengers if their FOIA exemption request is approved and then challengers can transmit confidential information to DHCD. Petitioners who have received a challenge will be notified and may also request FOIA exemption for information pertaining to their rebuttal.

*In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:*

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and*
- c. Stating the reasons why protection is necessary.*

*The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.*

## **Definitions**

**Adjacent**- adjoining parcels sharing a roadway, private or public, other than highways or expressways as a common boundary

**Authorized** - federal awards that have received final approval for funding

**Passing** - any structure that can receive service. Multi-unit structures may be counted as more than 1 passing, provided individual connections and accounts are planned at that structure.

**Peak Usage** - Weekdays from 7:00 p.m. - 11:00 p.m. local time.

**Point Shapefiles** - shapefiles that show each proposed passing in the application area as a singular mapped point, in the application or challenged area containing attribute data showing the addresses of each point.

**Polygon Shapefiles** - shapefiles delineating the general project area(s).

**RSSI** - Received Signal Strength Indicator, or RSSI, is an estimated measure of power level that a wireless client device is receiving from an access point or router. See Appendix B for more information.

**Service Area** - Refers to the geographic territory in which a petitioner has proposed to provide service.

**Serviceable Units** - Properties that are eligible for broadband service without additional special construction costs from the property owner/subscriber.

**Street Level Data** - Address ranges or specific addresses from an existing provider along with the existing number of customers within those ranges. No personal information on specific customers will be requested.

**Unserved** - Properties that do not have internet access at speeds equal to or greater than the speed threshold at which internet service is considered broadband, as determined by the Department of Housing and Community Development in its the Virginia Telecommunication Initiative program guidelines and criteria

## Appendix A - Requirements of Speed Tests

As outlined in these guidelines, DHCD reserves the right to request verified speed tests on all or portion(s) of a challenger's existing network. Upon the request of DHCD, verified speed tests must be conducted at times of peak network usage and be distributed throughout a challenged area..

DHCD prefers speed tests be conducted at the access point (i.e. customer premise equipment, router, or modem) at the end-user location. Recognizing the feasibility constraints of conducting speed tests at end-user locations, speed tests that are reported by the management application software at the network operations center will also be considered as valid.

The percent of required speed tests on a challenger's existing network will depend on the size of the challenged area.

### Requirements of Challengers:

If challengers are required to submit verified speed tests as a part of their challenge, or are requested by DHCD to submit speed test information, the number of required speed tests will be based upon the total number of challenged units. Please see the table below for the required number of speed tests.

Number of Challenged Locations within an Application Area	Less than 500	500 or Greater, but less than 1000	1000 or Greater
Required Percentage of Speed Tests, based on Total Number of Challenged Units	10%	7.5%	5%

In the event the challenger does not have enough customers to achieve the required percentage of speed tests, DHCD will consider field tests data to satisfy the requirement. When submitting this information to DHCD, speed tests and field tests must be listed in a spreadsheet along with the address of the unit or location at which the speed test or field test was conducted. If these materials submitted are incomplete, DHCD will consider the application invalid.